

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT :	Kung, <i>et al.</i>	CONFIRMATION No. :	2840
SERIAL NUMBER :	10/590,672	EXAMINER :	Lei Yao
FILING OR 371(C) DATE :	October 23, 2007	ART UNIT :	1642
FOR :	METHODS FOR INHIBITING TUMOR CELL GROWTH		

Via EFS

APPLICATION FOR ADJUSTMENT OF PATENT TERM UNDER 37 C.F.R. § 1.705(b)

Applicants request reconsideration of the patent term adjustment under 37 C.F.R. § 1.705(b) to **69** days as of the mailing of the Notice of Allowance. In support of this request, Applicants submit the following statement of facts pursuant to 37 C.F.R. § 1.705(b).

(i) The adjustment under 37 C.F.R. § 1.703 (USPTO Delay) is **30** days, which is the sum of **30** days (delay under 37 C.F.R. § 1.703(a), “the 14-month rule”) and **0** days (delay under 37 C.F.R. § 1.703(a),(c)-(e)).

(ii) The reduction of patent term under 37 C.F.R. § 1.704(b) for Applicants’ failure to engage in reasonable efforts to conclude prosecution of the application calculated by the Office is **78** days. In accordance with Applicants’ duty of candor and good faith toward the Office, Applicants believe an additional **184** days of Applicant delay should be applied for the following reasons:

- On October 23, 2007, Applicants filed a Response to Notice to File Missing Parts with a four month extension of time. The Response was filed **92** days after the date that is three months after the mailing date of the Notice.
- On May 25, 2009, Applicants filed an Information Disclosure Statement which qualified as a submission under 37 C.F.R. 1.704(c)(8). As this paper was not expressly requested by the Examiner and was filed after the February 23, 2009 Response to Restriction Requirement had been filed, the period of adjustment begins on the day after the date the initial reply was filed, *i.e.* February 24, 2009, and ends on the date that the other paper was filed, *i.e.* May 25, 2009, which is **92** days.

(iii) As of the present time, the delay due to the failure of the Office to issue a patent within three years after the date on which the application was filed is estimated to be **301** days. This application is a national stage application of International Application No. PCT/US2005/005922. The international filing date is February 25, 2005. The filing date used to calculate the patent term adjustment under 37 C.F.R. § 1.702(b) is August 25, 2006, which is 30 months from the priority date of February 25, 2004 (no Chapter II Demand was required or filed in this application). Accordingly, the application should have issued three years later, on August 25, 2009. As of the present time, the delay due to the failure of the Office to issue a patent within three years after the date on which the application was filed is estimated to be **301** days, which is the period from August 26, 2009 (the day after the date that is the three year anniversary of the application filing date) up to and including June 22, 2010 (the projected issue date, which is the Tuesday before the date that is 28 weeks after the mailing date of the USPTO Notice of Determination of Patent Term Adjustment under 35 U.S.C. 154(b), mailed December 15, 2009). Thus, the correct patent term adjustment calculated under 37 C.F.R. § 1.702(b) is **69** days ($331 - 262 = 69$ days).

In summary, Applicants respectfully request an adjustment of patent term to indicate a total PTA of **69** days, which is the sum of periods under 37 C.F.R. § 1.703(a),(c)-(e) (**30** days) and the estimated delay due to the failure of the Office to issue a patent within three years (**301** days), less the sum of the periods under 37 C.F.R. § 1.704 (**262** days).

The above-identified application is not subject to a terminal disclaimer. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 C.F.R. § 1.704, other than the circumstances of record.

Applicants reserve the right to request reconsideration of the patent term calculated under 37 C.F.R. § 1.703(b).

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Pursuant to 37 C.F.R. § 1.705(b) and § 1.18(e), the fee required for filing this application for patent term adjustment is believed to be **\$200.00**. Please charge the required fee, and any additional fees due, or credit any overpayment of same, to Deposit Account No. 50-0311, Customer No. 30623, Reference No.: 20363-025 NATL.

Respectfully submitted,

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